

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 1 OCTOBER 2009

COMMITTEE ROOM 3, HOVE TOWN HALL

MINUTES

Present: Councillor Lepper (Chairman); Hawkes and Simson

Officers: Jean Cranford (Licensing Manager), Rebecca Sidell (Lawyer) and Jane Clarke (Democratic Services Officer)

PART ONE

59. TO APPOINT A CHAIRMAN FOR THE MEETING

59.1 Councillor Lepper was appointed Chairman for the meeting.

60. PROCEDURAL BUSINESS

60a Declarations of Substitutes

60.1 There were none.

60b Declarations of Interests

60.2 There were none.

60c Exclusion of the Press and Public

60.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

60.4 **RESOLVED** – That the press and public be not excluded.

61. THE NEW BUSH, 1 ARUNDEL ROAD, BRIGHTON

- 61.1 The Panel considered a report from the Assistant Director of Public Safety regarding an application for review of a premises licence under the Licensing Act 2003 for The New Bush, 1 Arundel Road, Brighton, BN2 3TE (for copy see minute book).
- 61.2 Mr Sharp, representing the Freeholder, Enterprise Inns; Mr Reily, co-lessee; Mr Lakin, Premise Licence Holder (PLH) and Designated Premises Supervisor (DPS); and Mr Kirby, co-lessee; attended the hearing to make representations against the application. Ms Rirsch from Environmental Protection at Brighton & Hove City Council attended to make representations in favour of the review application.
- 61.3 The Licensing Manager began her statement and stated that the review application had been submitted by Environmental Protection on the grounds of prevention of public nuisance. No other representations had been received but there was a lengthy history of noise complaint at the premises. Three separate residents had made complaints about noise from the premises. The Licensing Manager stated that incident reports had been submitted by the Police in relation to the premises, and she asked if it was the Panel's wish to view these.
- 61.4 Mr Sharp stated that the incident reports were part of the representation from the PLH and co-lessees, but felt they were not particularly relevant to their case and the Panel could proceed without viewing them. The Chairman agreed not to see the late incident reports.
- 61.5 The Licensing Manager continued and stated that the options open to the Panel were to modify any of the existing conditions on the licence; to exclude any licensable activity; to remove the Designated Premises Supervisor; to suspend the licence for a period not more than three months; to revoke the licence; or to do nothing.
- 61.6 The Chairman asked if there were any questions of the Licensing Manager's statement. Mr Sharpe asked what times the noise disturbances occurred and the Chairman stated that this information would be covered in the representation from Environmental Protection.
- 61.7 Ms Rirsch began her representation and stated that a Noise Abatement Order had been issued on the premises in September 2007 relating to amplified music. A noise limiter was installed and set in September 2007, but despite this a following five breaches of the notice were identified. A formal caution was issued on 6 August 2009. Breaches of licence conditions were also observed including door and windows remaining open past the agreed time of closure; patrons drinking outside the premises past the agreed time, and admission to the premises after hours. On 19 June 2008 the noise limiter was reset on the request of the premises, but further complaints were received between December 2008 and June 2009. In July 2009 a meeting took place with the PLH and the Licensing Authority to discuss the situation and possible actions to resolve it. There was evidence that the limiter had been tampered with and although the caution had been served, further complaints were received. Ms Rirsch believed that the licensing conditions were not sufficient to prevent problems at the premises and had called the review to assess these, and she had put forward additional conditions as part of the

review. She added that the times of the breaches were recorded as occurring between 22:30 hours and 23:00 hours.

61.8 The Chairman asked if there were any questions and Councillor Simson asked if the series of complaints received on 3 September had originated from the same complainant. Ms Rirsch stated that they had come from a variety of different properties around the premises.

61.9 There were no further questions from the interested parties.

61.10 Mr Sharp began his representation and stated that several improvements had been made to the premises over the last three years and this was acknowledged by both the Licensing Authority and the Police. Meetings with Local Residents' Associations had taken place and a way forward agreed, resulting in conditions being proposed for the licence.

Mr Sharp stated that the premises had agreed to all of the conditions proposed for the licence but asked for three amendments to the conditions. He stated that the premises was willing to keep doors and windows closed but asked that the condition be amended to "when regulated entertainment takes place" as there was not a noise problem at other times. Mr Sharp added that keeping the doors and windows open during the summer assisted with ventilation of the premises.

Mr Sharp also asked that the number of customers allowed to smoke outside be increased from 5 to 8 persons, which would reflect more accurately the numbers that currently smoked outside the premises on a busy night. Finally, Mr Sharp asked that the condition relating to customers congregating outside the premises be clarified to state "the designated outside area".

61.11 The Chairman asked if there were any questions of Mr Sharp's representation and Councillor Simson asked what measures would be put in place to ensure the premises adhered to these conditions, as there was evidence they were not adhering to the current conditions on the licence. Mr Lakin replied that conditions would be adhered to in the future, and new hand-held monitors had been purchased by the premises to help with checking noise levels.

61.12 Councillor Simson asked if meetings with the Police were still taking place and Mr Lakin replied that they were not as the Police were now happy with the premises.

61.13 The Chairman asked for a guarantee that the new licence conditions would not be breached as the old ones had, and Mr Lakin replied that the premises was no longer holding karaoke nights, which had been the source of some of the complaints.

61.14 The Chairman asked if live bands played at the premises and Mr Lakin stated that they were, but the music was run through a sound limiter. The Chairman pointed out that the unit had been tampered with in the past and was not successful in preventing noise complaints. Mr Lakin agreed but added that they were in the process of making the unit tamper-proof to ensure there were no further problems.

- 61.15 The Chairman asked about the meetings that the premises had with the Local Residents' Association. Mr Reily stated that they had attended the Black Rock Residents' Association to ascertain if any complaints were being made about the premises, but there had been none. The meeting was not specifically about the premises and they had not made themselves known at the meeting. This association had now closed down and the premises did not meet with any other associations.
- 61.16 The Chairman asked how noise complaints were dealt with at the premises. Mr Lakin stated that the residents did not complain directly to the premises but rather went through the Environmental Protection Team, who then subsequently notified the premises that a complaint had been made.
- 61.17 Councillor Simson asked why the condition relating to doors and windows was being breached. Mr Lakin replied that the premises staff tried to ensure all the doors and windows remained closed but customers would open them again without their knowledge.
- 61.18 Ms Rirsch asked if there was a taxi policy at the premises. Mr Lakin replied that there was, and that customers could wait inside the premises for their taxi to arrive.
- 61.19 Ms Rirsch asked if the premises would accept a condition to prevent karaoke taking place at the premises. Mr Reily said they would not agree to this as it would make the business too inflexible.
- 61.20 Councillor Simson asked for assurance that the premises management understood every condition on their licence, as it seemed many were not being fulfilled. Mr Lakin agreed that they did understand, but that it was sometimes so busy at the premises it was difficult for the management to monitor them effectively. Councillor Simson reminded the DPS that it was their legal responsibility to ensure that every condition was adhered to.
- 61.21 The Chairman asked if the premises management were aware of the possible consequences of a second review, which could lead to revocation of the licence and Mr Lakin agreed that they were.
- 61.22 The Licensing Manager began her final statement and stated steps for a first intervention could include removal of the DPS and/or manager, suspension of the licence or restriction in hours of licensable activities. The first intervention should be treated as a clear warning and there was a presumption of revocation should the premises be reviewed again.
- 61.23 Ms Rirsch stated that she had nothing further to add to her representation.
- 61.24 Mr Sparks began his final representation and stated that the premises management recognised the situation was serious and steps would be taken to ensure that they did not lose the premises licence. He stated that all conditions would be adhered to and that the premises management understood the consequences of a second review.
- 61.25 **RESOLVED** – That the panel decided to take the following action in respect of the review:

The panel decided to amend the times for some licensable activities so that all regulated entertainment should finish at:

Mon-Thu 10:00 – 23:00

Fri-Sat 10:00 – 00:00

Sun 10:00 – 22:00

New Years Eve is unaffected.

They decided to attach the conditions from Environmental Health with amendments as follows:

1. All live and amplified music will be controlled with a tamper proof sound limiter to be set and agreed by the Environmental Health Department.
2. There will be no drinks allowed to be taken outside the front or the rear of the premises between 22.00 and 10.00
3. Windows will be kept closed when regulated entertainment is taking place and after 23.00 hours.
4. All external doors, including the internal lobby doors will be kept closed when regulated entertainment takes place, other than for access and egress.
5. Licensees and staff will undertake regular walks around inside and outside the premises in order to monitor noise levels and ensure that both ambient sound and sound generated during regulated entertainment is at a level that does not constitute a nuisance. These checks will be documented.
6. No more than 8 customers outside on the front terrace area of the premises between 23:00 and closing.
7. All drinks consumed in the outside area must be in plastic or shatterproof glasses. Management will not allow patrons to congregate outside of the designated terrace area on the pavement, curb or in the road whilst drinking etc.

The following 2 conditions are to be removed from the licence:

1. On Friday and Saturday nights there will be no admission or readmission to the public after 22.30 hours until close
2. Drinking by patrons in the area immediately in front of the pub seated at tables/benches will be allowed in from opening until 21.00 hours only, after which any remaining patrons must go inside the premises. All drinks consumed in the outside area must be in plastic or shatterproof glasses. Management will not allow patrons to congregate outside of the premises on the pavement, the curb or in the road whilst drinking etc.

The panel were concerned that there were many conditions on the licence already some of which had been breached. They wished to emphasise that it was the responsibility of the Designated Premises Supervisor to ensure the conditions were adhered to. Some of the existing conditions such as 3 monthly meetings with the police should be re-visited by the licence holder in conjunction with the police to see if they were still relevant or should be removed perhaps by way of a minor variation application. Further the panel stressed that it was good practice to meet regularly with local residents to resolve any problems at the premises.

The panel warned the licence holders that this was a first intervention under the Government red and yellow card system so that in effect this was a 'yellow card'. The consequences of a second intervention could be dire for the premises.

62. THE GREEN DOOR STORE, LOWER GOODS YARD, BRIGHTON STATION

- 62.1 The Panel considered a report from the Assistant Director of Public Safety regarding an application for a new premises licence for The Green Door Store, Lower Goods Yard, Brighton Station, Brighton (for copy see minute book).
- 62.2 Mr Seivewright, the applicant, and Mr Simmonds, agent for the applicant, attended the hearing to make representations in favour of the application. Mrs Crowhurst, from the North Laine Community Association and Councillor West, on behalf of the North Laine Community Association, attended the hearing to make representations against the application.
- 62.3 Councillor West addressed the Panel and stated that the map location contained within the report was incorrect. He asked for assurances that both Licensing Officers and the Police had assessed the correct location when dealing with the application. The Licensing Manager confirmed that site visits had taken place to the premises and the correct location ascertained from there. She apologised to the Panel for the incorrectly marked map but confirmed that it did not have a bearing on the application. Mr Simmonds, on behalf of the applicant, confirmed that the blue notices had been clearly displayed at the correct address.
- 62.4 The Licensing Manager began by stating that the application was just outside the Special Stress Area (SSA), and the applicant had taken this into account when drawing up the operating schedule. Agreements on conditions had been reached with Sussex Police and Environmental Protection, but there was an outstanding representation from the North Laine Community Association based on Protection of Children from Harm and Prevention of Crime and Disorder. Brighton & Hove Licensing Policy stated that regard had to be given to the type and location of a new premises licence and its likely impact on nearby residential amenity.
- 62.5 The Chairman asked if there were any questions of the Licensing Manager's statement and there were none.
- 62.6 Councillor West began his representation and stated that many residents in the local area had concerns about the high frequency of licensed premises allowed in the area. There were frequent anti-social problems including late night drunkenness; brawling; urination and vomiting, and the North Laine Community Association believed that this could be attributed to the high frequency of premises allowed to sell alcohol in the area. He noted that the location map was incorrect, and that the premises was in fact located on a narrow road with no proper pavements. Although it was just outside the SSA, it would have a significant detrimental impact on the area. Councillor West added that he was concerned about noise breakout at the premises caused from arrivals and departures, and the topography of the site would increase these problems for local residents.

He felt the area was predominantly commercial and residential and therefore unsuitable for licensed premises. The original Police representation noted that the position was in a challenging and difficult area which had a high history of anti-social behaviour. He believed that the number of conditions on the licence represented how difficult the site would be to control and it would undoubtedly have a negative impact on the area. Councillor West also highlighted the health problems created by increased licence hours were now a topical issue in government and needed to be addressed at a local level. Councillor West believed this was an unsuitable location for any licensed premises and asked that the Panel refuse the application.

62.7 The Chairman asked if there were any questions of Councillor West's representation and Mr Simmonds asked if there was any evidence that this application would breach the licensing objectives. Councillor West pointed to the extreme concern expressed by the Police in their letter of representation. The Chairman stated that the Police letter of representation had been withdrawn and as such could not be considered as part of the proceedings. She asked Councillor West not to refer to the letter from the Police.

62.8 Mrs Crowhurst began her representation and stated that the 2009 Health Impact Assessment provided evidence for their case and the application was very close to the SSA. She noted that one in six premises in the North Laine area was permitted to supply alcohol, which was a very high ratio for a predominantly residential area. She felt that a nightclub was unsuitable for the North Laine and the noise from this would emanate and exacerbate through the area.

Mrs Crowhurst stated that most licensed premises in the area closed around midnight but the area was still afflicted with anti-social behaviour and instances of vandalism. She referred to the letter from the Police and felt this was disturbing and believed that a 24 hours licence at this premises could only exacerbate problems for a troubled area. She stated it was difficult for residents to prove which premises people had come from as they were passing through the area and Police resources were concentrated in West Street so it was difficult for them to control any problems in North Laine.

62.9 The Chairman asked if there were any questions of Mrs Crowhurst's representation and there were none.

62.10 Mr Simmonds began his representation on behalf of the applicant and stated that the premises sat in the arches under the railway. There was an extremely solid brick structure on three sides and the only possible area noise could breakout from was from the frontage of the premises. However, there were several conditions proposed in conjunction with the Police and Environmental Protection and Mr Simmonds felt these would be adequate in upholding the licensing objectives.

Mr Simmonds stated that the premises was not a nightclub in the traditional sense and the purpose of the premises would be a live music venue which would seek to promote live music in the town, especially from younger bands seeking their first gigs. He noted that the maximum capacity for the premises was 280 people and the 24 hour licence was to enable events to be held when students were not working or studying.

62.11 Mr Seivewright began his representation and stated that he had been a stage manager in the past and was very experienced in the live music industry. He stated that the venue would be a quality establishment promoting live music in the city, and sound levels would be carefully monitored and controlled. He recognised the licence was very broad and stated that this was to give him flexibility in the future to run an exciting and unique entertainment venue.

Mr Seivewright understood the concerns of the local residents, but felt that his main clientele would not be the cause of any anti-social behaviour. He noted that regular checks outside the premises would be made by staff to ensure there was no noise breakout.

62.12 Mr Simmonds added that there seemed to be a high number of conditions on the licence but this was mainly due to the Police conditions relating to the running of an under 18s event. He noted that the premises would not be likely to need these conditions however as there was no intention of running specific under 18 events. Mr Simmonds stated that the applicant was happy to liaise with the North Laine Community Association over any concerns they held but did not believe this application would add to the problems of the area.

62.13 The Chairman asked if there were any questions, and asked for clarification of the under 18s specific conditions. Mr Simmonds replied that the law allowed under 16s into any licensed premises without supervision until 00:00 hours, which had been brought back to 23:00 hours at this premises on a management decision. After this the Door Staff would ensure that no under 16s remained in the premises after this time and IDs would be checked to adhere to this condition. A risk assessment of each event would take place to ensure the management of the night was effective.

62.14 The Chairman expressed concerns that under 16s would remain on the premises after 23:00 hours and Mr Simmonds confirmed that IDs would be checked to ensure this did not occur. The Chairman asked about 17 year olds and Mr Simmonds stated that legally they were allowed to stay on the premises, but could not be served alcohol.

62.15 Councillor Simson expressed concern that this age group would be particularly difficult to manage in terms of anti-social behaviour problems but noted that they would have to leave the premises by 23:00 hours, which would help to alleviate any problems they might cause. She asked how the premises would deal with dispersal of this group at 23:00 hours. Mr Seivewright replied that there would not be large amounts of this age group on the premises any way, and he did not feel this would be difficult for the door staff to manage.

62.16 Councillor Simson asked if it was likely that the dispersal would occur mainly into Fleet Street and Trafalgar Street and Mr Seivewright felt that it would mainly be Trafalgar Street but there were taxi ranks at the nearby station and taxis could collect customers from outside the premises on an arranged basis.

62.17 Councillor Lepper asked if 25 people could use the outside space to smoke in all night and Mr Simmonds replied that this was correct but there would be no tables or chairs outside after 23:00 hours. The Door Staff would also monitor numbers to ensure they

were not causing a problem. He added that there would be no access to this area from the street.

- 62.18 Councillor West on behalf of the North Laine Residents' Association asked if Mr Seivewright was aware of the problems associated with dispersal of groups of under 18 year olds. Mr Simmonds replied that the premises would be properly controlled with good management and he did not foresee any problems. He added that conditions could be added to the licence if there were problems.
- 62.19 Councillor West asked if Mr Seivewright was prepared to accept a condition which did not allow under 18 year olds on the premises and Mr Simmonds replied that they would not.
- 62.20 Councillor West asked if the licence could be used 24 hours a day, 7 days a week. Mr Simmonds replied that although it was a broad licence the conditions were specific to the control of the premises and even if the licence was sold in the future, this control would be retained.
- 62.21 Councillor West asked if there was an unlimited amount of people allowed on the patio during the day. Mr Seivewright replied that the area was very noisy generally during the day, with the train station very close by. He felt that the number of people on the patio during the day would be minimal and there was no regulated entertainment applied for outside.
- 62.22 Councillor West asked how people noise would be controlled. Mr Simmonds replied that the premises would be using qualified Door Staff who were trained to manage people properly. He did not feel the customers at the premises would cause problems but believed that conditions on the licence, including the use of a Mobile Support Unit if necessary, would help to control any problems that did occur.
- 62.23 Mrs Crowhurst asked what the definition of a nightclub was, and Mr Simmonds replied that a nightclub was not recognised in the Licensing Act 2003 and not clarified in law. He noted it would generally be a place where music and dancing took place, but felt that The Green Door Store would be more than this and therefore not classified as a nightclub.
- 62.24 Mrs Crowhurst asked how late night noise, which travelled more easily, would be controlled. Mr Simmonds replied that there would be a staggered dispersal from the premises and so late night noise would be reduced to a minimum.
- 62.25 Mrs Crowhurst asked how day time noise from the patio would be controlled on Saturdays and Sundays. Mr Simmonds reiterated that there would be no outside regulated entertainment and the patio area would mainly be used for smoking. He felt that it would be well controlled and would not cause a problem.
- 62.26 The Chairman asked if there was a kitchen on the premises, and whether hot drinks would be served. Mr Simmonds replied that there was not a kitchen and that any food served would be low-key and limited. He added that hot drinks would be provided. The Chairman asked if water could be provided at all times and Mr Simmonds agreed to this.

- 62.27 The Licensing Manager began her final statement and stated that licensing guidance advised that the promotion of the licensing objectives was paramount, and that each application should be taken on its merits. Reasonable measures should be taken by all premises to reduce noise, but the Licensing Manager added that control of noise nuisance was covered under separate legislation and therefore should not be conditioned on the Premise Licence. Finally, the Licensing Manager added that the Brighton & Hove City Council Licensing Policy actively promoted live music and dance venues within the city.
- 62.28 Councillor West began his final representation and believed he had illustrated how this premises would cause problems for local residents in this location. He felt the number of people coming and going from the premises would cause noise and be a negative intrusion on residents' lives. They would disperse from the premises through the SSA, which was cause for further concern. Councillor West added that the Police had already expressed concern about a licensed establishment in this area and he felt the Licensing Authority needed to protect residents from premises causing problems. He asked the Panel to either refuse the application or reduce the hours of the application.
- 62.29 Mrs Crowhurst began her final representation and stated that she felt the music from the premises would reverberate outside and throughout the area. She was very worried about young people leaving the establishment at 23:00 hours and the problems this could cause and felt that the general comings and goings at the premises would create an intolerable disturbance and noise for residents. She did not believe this was a suitable area for this type of establishment and asked the Panel to refuse the application.
- 62.30 Mr Simmonds began his final representation and stated that there was no intention of adding to the problems in the area and the applicant had engaged in detailed discussions with the Police and Environmental Protection to ensure the conditions were adequate to prevent this. He believed this would be an exciting new venue for Brighton & Hove which would be operated effectively and responsibly.
- 62.31 **RESOLVED** – That the Panel have decided to grant the Premises Licence as applied for, with the conditions agreed with Sussex Police and Environmental Protection, and those on the operating schedule.

The Panel recognised the concerns of residents relating to noise but felt the conditions agreed with the Police and on the operating schedule were sufficient to deal with any problems that might occur at the premises and promote the Licensing Objectives.

Panel reminded the interested parties that if there should be evidence of breach of conditions or problems with the premises in the future, a review of the licence could be considered.

The meeting concluded at 1.30pm

Signed

Chairman

Dated this

day of